

REMARKS

In the Examiner's office action mailed Oct. 3, 2003, claims 1-30 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-23 of US Patent No: 6,492,379 (the '379 patent).

Although Applicants disagree with the Examiner's allegation that the claimed invention is not patentably distinct from the '379 patent as the claimed invention is directed to a different crystal form of 9-nitrocampthecin than that specified by claim 1-23 of the '379 patent, and the Examiner's further office action mailed January 19, 2005 did not maintain the obviousness-type double patenting rejection over the '379 patent, in an effort to advance prosecution of this application and without acquiescing to the propriety of this rejection, Applicants submit herewith a terminal disclaimer over the '379 patent.

This Rule 312 Amendment is being made after the Notice of Allowance mailed January 19, 2006. Entry of this Rule 312 Amendment is proper since does not change the scope of the specification or add new matter. Entry of this Rule 312 Amendment is therefore respectfully requested.

Should the Examiner have any questions, the Examiner is encouraged to telephone the undersigned.

The Commissioner is authorized to charge any additional fees that may be required, including petition fees and extension of time fees, or credit any overpayment to Deposit Account No. 23-2415 (Docket No.12636-267).

Respectfully submitted,

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